

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
HATTIESBURG DIVISION**

<b>APRIL AGEE, ET AL.</b>	§	<b>PLAINTIFFS</b>
	§	
<b>VS.</b>	§	<b>CASE NO. 2:07CV1010-KS-MTP</b>
	§	
<b>WAYNE FARMS LLC</b>	§	<b>DEFENDANT</b>
	§	
<u>CONSOLIDATED WITH</u>	§	
	§	
<b>EULA M. KEYES, ET AL.</b>	§	<b>PLAINTIFFS</b>
	§	
<b>VS.</b>	§	<b>CASE NO. 2:07CV1011-MTP</b>
	§	
<b>WAYNE FARMS LLC</b>	§	<b>DEFENDANT</b>

**DEFENDANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT**  
**(PERSONAL TIME ADEQUATE)**

COMES NOW Wayne Farms LLC, moving the Court to enter partial summary judgment dismissing with prejudice 17 (2%) of our 839 Plaintiffs who initially disclosed facts that defeat their FLSA overtime claims. In support of this Motion, Wayne Farms would show:

1. This case contests a specific pay practice – *i.e.*, use of a master time card to track the work hours of people assigned to a processing line. Plaintiffs complain that this practice fails to capture time spent in work done away from the line, before and after work done on the line. The complaints ignore Wayne Farms’ practice of paying six extra daily minutes – called “Personal Time” – to such workers. See each Plaintiffs’ hours and earnings history listed in the chart below, which shows the amount of Personal Time paid to each Plaintiff under the personal time hours “PTHrs” and personal time earnings “PTEarn” columns. The Hours and Earnings Histories are drawn from employment records that Wayne Farms has produced to Plaintiffs, and that are stipulated to be authentic. See Business Records Stipulation, Doc. 25, 2:07md1872. The

Declaration of Benny Bishop, attached hereto as Exhibit 3, and the Declaration of Debbie Falls, attached as Exhibit 4, also attest to the practice of paying an additional six minutes per day of “Personal Time.”

2. Wayne Farms adds another five paid minutes to each day by giving Laurel plant employees a thirty-five minute lunch break, while deducting only thirty of those minutes from paid time. See Exhibit 5, Laurel Union Contract 11/17/03-11/17/06, Art. XXIV, Sec. 4 (LRL000094), and Exhibit 6, Laurel Union Contract 11/18/06-11/18/09, Art. XXIV, Sec. 4 (LRL031694). The Declaration of Benny Bishop, Ex. 3, and the Declaration of Debbie Falls, Ex. 4, attest to this practice as well.

3. Thus, altogether, Wayne Farms has paid these Plaintiffs an extra eleven minutes per day for “Personal Time.” Though the complaints ignore these eleven daily minutes, they are not subject to genuine dispute.

4. Each of the Plaintiffs listed in the table below made initial disclosures specifying the number of daily minutes – 12 or less – worked away from the line, outside the hours captured by the master time card. None credited Wayne Farms with the extra eleven daily minutes that Wayne Farms paid. See Exhibit 1 Plaintiffs’ Fifth Supplemental Initial Disclosures.

5. Assuming the truth of these Plaintiffs’ factual assertions, Wayne Farms already has met its obligation to pay for the minutes claimed. Therefore, these Plaintiffs should be dismissed based their admissions in the initial disclosures:

	<b><u>Name</u></b>	<b><u>Overtime Minutes Per Day Alleged in Initial Disclosure<sup>1</sup></u></b>	<b><u>Hours &amp; Earnings History<sup>2</sup></u></b>
1	Allen, Cassillie	10	LRL034036 – LRL034037 (Ex. 2, p. 1-2)
2	Barnett, Debora <sup>3</sup>	10	LRL034107 – LRL034109 (Ex. 2, p. 3-5)
3	Bridges, Anthony	6	LRL034215 – LRL034217 (Ex. 2, p. 6-8)
4	Brown, Sevetrium	10	LRL034230 – LRL034232 (Ex. 2, p. 9-11)
5	Clayton, David	10	LRL034314 – LRL034315 (Ex. 2, p. 12-13)
6	Crosby, Keisha	10	LRL034414 – LRL034417 (Ex. 2, p. 14-17)
7	Cunningham, Annie	12	LRL034425 – LRL034428 (Ex. 2, p. 18-21)
8	Dawkins, Ceola	5	LRL034460 – LRL034462 (Ex. 2, p. 22-24)
9	Evans, Errie	12	LRL034558 – LRL034560 (Ex. 2, p. 25-27)
10	Heard, Jacqueline	10	LRL034759 – LRL034760 (Ex. 2, p. 28-29)
11	Malley, Lakya	10	LRL035165 – LRL035167 (Ex. 2, p. 30-32)
12	Newell, Cecelia	12	LRL035369 – LRL035370 (Ex. 2, p. 33-34)
13	Payton, Willie D., Jr.	10	LRL035443 – LRL035445 (Ex. 2, p. 35-37)
14	Pruitt, Bobbie Jean	10	LRL035520 – LRL035523 (Ex. 2, p. 38-41)
15	Taylor, April	12	LRL035716 – LRL035718 (Ex. 2, p. 42-44)
16	Vale, Natasha	12	LRL035784 – LRL035785 (Ex. 2, p. 45-46)

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<sup>1</sup> See Exhibit 1 Plaintiffs' Fifth Supplemental Initial Disclosures.

<sup>2</sup> Each Hours & Earnings History shows the amount of Personal Time paid to each Plaintiff under the personal time hours "PTHrs" and personal time earnings "PTEarn" columns. The hours and earnings history shows weekly hours, so 0.5 of an hour is 30 minutes per week, or 6 minutes per day.

<sup>3</sup> Ms. Barnett also produced several of her Earnings Statements from Wayne Farms. On each statement, there is a line labeled Personal Time with 0.50 hours credited to Ms. Barnett each week. See Plaintiff's Doc. AGEE-LRL-BARNETT-1 – 20, attached hereto as Exhibit 7.

	<u>Name</u>	<u>Overtime Minutes Per Day Alleged in Initial Disclosure<sup>1</sup></u>	<u>Hours &amp; Earnings History<sup>2</sup></u>
17	Watson, Latasha	12	LRL035820 – LRL035821 (Ex. 2, p. 47-48)

WHEREFORE, Wayne Farms LLC moves the Court to enter partial summary judgment dismissing these 17 Plaintiffs from these actions, with prejudice, taxing to them all related costs.

Respectfully submitted this the 15<sup>th</sup> day of October, 2008.

WAYNE FARMS LLC

BY: BALCH & BINGHAM LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 15, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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